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Mercedes-Benz Financial Services

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 Santa Rosa Division

13 In re	}	Case No. 11-13214-AJ 7
14 Dean Gregory Asimos,	}	Chapter 7
15	}	Adv. Case No. _____
16 Debtor.	}	
17 Mercedes-Benz Financial Services USA	}	COMPLAINT TO DETERMINE
18 LLC, fka DCFS USA LLC,	}	DISCHARGEABILITY OF DEBT
19 Plaintiff,	}	[11 U.S.C. §§ 523(a)(6) and
20 v.	}	523(a)(2)(B)]
21 Dean Gregory Asimos,	}	DATE:
22 Defendant.	}	TIME:
	}	CTRM:
	}	[To be set by the Court]

23
24 Plaintiff Mercedes-Benz Financial Services USA LLC, fka DCFS USA LLC
25 (“Plaintiff”), alleges as follows:

26 **JURISDICTION**

27 1. This adversary proceeding is brought pursuant to 11 U.S.C. section 523
28 involving exceptions to discharge.

1 2. This court has jurisdiction over this adversary proceeding pursuant to 28
2 U.S.C. sections 1334 and 157 in that this action arises in and relates to the above-
3 entitled Chapter 7 case pending before the United States Bankruptcy Court, Central
4 District of California. This proceeding is a core proceeding under 28 U.S.C.
5 157(b)(2)(I).

6 **GENERAL ALLEGATIONS**

7 3. At all relevant times, plaintiff Mercedes-Benz Financial Services USA
8 LLC, fka DCFS USA LLC was and is a limited liability company organized and existing
9 under the laws of the State of Delaware, and qualified to conduct business in the State of
10 California.

11 4. At all relevant times herein, defendant Dean Gregory Asimos
12 ("Defendant") was and is, an individual residing in Burlingame, California, who filed a
13 voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code on
14 August 29, 2011.

15 5. On or about October 10, 2013, the Chapter 13 case was converted to a
16 Chapter 7 proceeding and Timothy W. Hoffman was appointed the trustee in the
17 converted Chapter 7 bankruptcy case.

18 6. Prior to the bankruptcy filing, the Defendant, on or about January 15,
19 2009, for valuable consideration, made, executed and delivered to Plaintiff, a written
20 Promissory Note and Security Agreement ("Note") for the purchase of certain personal
21 property described as a 2006 Mercedes-Benz S430V motor vehicle, Serial No.
22 WDBNG70J66A465211 (the "Vehicle"). Pursuant to the Note, the Defendant agreed to
23 pay for the purchase of the Vehicle, the total sum of \$54,023.40, in 60 equal monthly
24 payments in the sum of \$900.39 each beginning on February 15, 2009, until paid in full.
25 A true and correct copy of the Note is attached hereto marked as **Exhibit "1"** and
26 incorporated herein by this reference.

27 7. Plaintiff perfected its lienholder interest in the Vehicle by obtaining a
28 Certificate of Title from the California Department of Motor Vehicles. A true and

1 correct copy of the title is attached hereto marked as **Exhibit “2”** and incorporated
2 herein by this reference.

3 8. Beginning on November 15, 2009, the Defendant defaulted under the
4 terms of the Note by failing to make the required monthly payments.

5 9. On November 21, 2013, special appearing counsel on behalf of Plaintiff
6 appeared at the Defendant’s first meeting of creditors in the converted Chapter 7 case.
7 At that time, the Defendant, after taking an oath, stated that he had possession of the
8 Vehicle and that he intended to reaffirm the debt owed to Plaintiff, which he has failed
9 to do. The Defendant further listed the Vehicle in his Schedule B of personal property
10 filed with this Court.

11 10. Due to Defendant’s payment default, Plaintiff’s counsel filed a motion for
12 relief from automatic stay in the converted Chapter 7 case on December 11, 2013. The
13 motion was granted without opposition and on January 13, 2014, an Order on Motion
14 for Relief from Stay was entered in the records of this Court. Plaintiff respectfully
15 requests that this Court take judicial notice of said order, a true copy of which is
16 attached hereto marked as **Exhibit “3”** and incorporated herein by this reference.

17 11. After the granting of Plaintiff’s motion for relief from stay and prior to
18 filing the within action, Plaintiff sent a letter on January 10, 2014, to Defendant’s
19 counsel demanding the return of the Vehicle. However, the Vehicle was never returned.

20 **FIRST CLAIM FOR RELIEF**

21 **[11 U.S.C. Section 523(a)(6)]**

22 12. Plaintiff repeats and realleges each of the allegations contained in
23 paragraphs 1 through 11, inclusive and incorporates said paragraphs by reference as
24 though set forth in full herein.

25 13. Plaintiff is informed and believes that the Defendant has control,
26 possession or knowledge of the location of the Vehicle based on Defendant’s testimony
27 at his creditors’ meeting and his schedules filed with this Court. Prior to filing the
28 within action and after the granting of Plaintiff’s motion for relief from stay, Plaintiff’s

1 counsel made written demand for the return of the Vehicle on January 10, 2014, but
2 Plaintiff's counsel received no response to said demand prior to the filing of this
3 complaint. Plaintiff is further informed and believes that the Defendant converted the
4 Vehicle for his own use by refusing to return the Vehicle, transferring the Vehicle to
5 third parties without Plaintiff's knowledge or consent and making it unavailable for
6 recovery, thereby willfully and maliciously causing injury to property of Plaintiff which
7 warrants the award of exemplary and punitive damages.

8 14. The terms of the Note provides that in the event of enforcement of the
9 Note, Defendant agreed to pay any attorneys' fees and costs incurred by Plaintiff.
10 Plaintiff has retained the firm of Caley & Associates to prosecute this action and is
11 entitled to reasonable attorneys' fees and costs incurred in this action.

12 15. Due to Defendant's actions, the debt owed by Defendant to Plaintiff in the
13 sum of not less than \$47,164.49, plus accruing interest and late charges from
14 December 14, 2013, plus attorneys' fees and costs are nondischargeable under 11 U.S.C.
15 section 523(a)(6).

16 **SECOND CLAIM FOR RELIEF**

17 **[11 U.S.C. Section 523(a)(2)(B)]**

18 16. Plaintiff repeats and realleges each of the allegations contained in
19 paragraphs 1 through 15, inclusive and incorporates said paragraphs by reference as
20 though set forth in full herein.

21 17. On or about January 15, 2009, in order to induce Plaintiff to extend credit
22 to Defendant, Defendant submitted to Plaintiff, a Personal Information Update setting
23 forth Defendant's address and employment. The Update submitted by Defendant was
24 materially false, at least in the following respects: Defendant's income differs
25 significantly when compared with his schedules filed with this court. Defendant's
26 Update shows employment as a real estate broker for 14 years earning a monthly
27 household income of \$12,500, for a total annual income of \$150,000. However,
28 according to Defendant's initial statement of financial affairs filed with his Chapter 13

1 petition on August 29, 2011, the Defendant's annual income from business was \$51,153
2 in 2009 and \$47,021, in 2008, as divorced with no dependents according to his Schedule
3 I of current income. On January 20, 2012, the Defendant filed his first amended
4 statement of financial affairs with this court which lists annual income of \$115,900, in
5 2009. On December 3, 2013, the Defendant filed his second amended statement of
6 financial affairs with this court which again lists annual income of \$115,900, in 2009.

7 18. Plaintiff relied upon the information provided by Defendant in his Update
8 in extending credit to Defendant, and credit would not have been extended but for the
9 Update submitted by Defendant. Defendant, in doing the above-acts, incurred the debt
10 with the intent not to repay it.

11 19. Based on the Update submitted by Defendant, for which Plaintiff is
12 informed and believes contained false information as set forth herein, Plaintiff has been
13 damaged in the sum of at least \$47,164.49, plus accruing interest and late charges from
14 December 14, 2013, pursuant to the terms of the Note, plus attorneys' fees and court
15 costs.

16 20. The terms of the Note provided that in the event of enforcement of the
17 Note, Defendant agreed to pay attorneys' fees and costs incurred by Plaintiff. Plaintiff
18 has retained the law firm of Caley & Associates, licensed and practicing attorneys in the
19 State of California, to prosecute this action and is entitled to reasonable attorneys' fees
20 and costs incurred in this action.

21 21. Due to Defendant's actions, the debt owed by Defendant to Plaintiff in the
22 sum of at least \$47,164.49, plus accruing interest and late charges from December 14,
23 2013, plus attorneys' fees and costs are nondischargeable under 11 U.S.C. section
24 523(a)(2)(B).

25 WHEREFORE, Plaintiff prays for judgment as follows:

26 **ON ALL CLAIMS FOR RELIEF**

27 1. For a determination that the sum of \$47,164.49, plus accruing interest and late
28 charges from and after December 14, 2013, plus attorneys' fees and costs are

1 nondischargeable in this bankruptcy proceeding pursuant to 11 U.S.C. sections 523(a)(6)
2 and 523(a)(2)(B);

3 2. For damages in the sum of \$47,164.49, plus accruing interest and late charges
4 from and after December 14, 2013;

5 3. For reasonable attorneys' fees and costs incurred by Plaintiff;

6 4. For exemplary and punitive damages; and

7 5. For such other and further relief as the Court deems just and proper.

8 Dated: January 21, 2014

9 CALEY & ASSOCIATES
A Professional Corporation

10
11 By: Rebecca A. Caley
12 Rebecca A. Caley
13 Attorneys for Plaintiff,
14 Mercedes-Benz Financial Services
15 USA LLC, fka DCFS USA LLC
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